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Paper No. 9

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OFFICE OF PETITIONS

In re Application of	:	
Guennadi Eremin	:	DECISION GRANTING
Application No. 09/880,951	:	PETITION
Filed: January 11, 2002	:	
For: Prunus Plant Named "VSV-1"	:	

This is a decision on the petition filed May 20, 2003, requesting that the above-identified application be accorded the filing date of January 11, 2002, the date omitted drawings were filed with the United States Patent and Trademark (Office).

On January 11, 2002, applicant deposited the above-identified application. However, on August 16, 2001, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application," requiring drawings of applicant's invention and stating that the filing date would be the date of receipt of the omitted drawings.

In response, on January 11, 2002, applicant submitted photographs of the claimed plant and a description thereof, as well as an authorization to charge a credit card for additional fees.

On January 22, 2003, the Office of Initial Patent Examination mailed a Notice of Abandonment for failure to reply in a timely manner to the Notice of Incomplete. Additionally, the Office mailed a Notice of Termination of Proceedings, indicating that the application did not meet the requirements of 37 CFR 1.53 to be entitled to a filing date, and that the filing error specified in the Notice of August 16, 2001, was not timely corrected. The Notice of Termination of Proceedings further indicated that the \$320.00 fee submitted with the application, less the \$130.00 handling fee, would be refunded.

In response, on May 20, 2003, applicant submitted the present petition and a new declaration. Applicant states that all requirements for a filing date were met on January 11, 2002, and request that the above-identified application be accorded a filing date of January 11, 2002.

Initially, the Office notes that when the Notice of Abandonment was mailed to applicant the present application had not been accorded a filing date. The Office further notes that failure to respond timely to a Notice of Incomplete Nonprovisional Application - No Filing Date Granted cannot result in abandonment of the application. Therefore, the Notice of Abandonment was sent in error and is hereby vacated.

A review of the record indicates that applicant submitted photographs of the plant on January 11, 2002. Accordingly, the application was complete on January 11, 2002, and was entitled to a filing date.

Therefore, the petition is granted.

The current filing fee for a plant application is \$260.00. The finance records indicate that the Office refunded the application fee minus the \$130.00 handling fee. Accordingly, the difference of \$130.00 will be charged to Deposit Account No. 23-0650. No petition fee is necessary.

The application is being returned to the Office of Initial Patent Examination to accord a filing date of January 11, 2002, using the photographs submitted on that date, and for the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

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